Government of Kerala
1978

Reg. No. KL/TV/12

KERALA GAZETTE

EXTRAORDINARY

PUBLISHED BY AUTHORITY

Vol. XXIII] Trivandrum, Wednesday, 21st June 1978 / 31st Jyaistha 1900 [No. 407

GOVERNMENT OF KERALA

Public Works and Electricity Department

NOTIFICATION

No. 14328/ELA1/78/PW&E. *Dated, Trivandrum, 20th June 1978.*

S. R. O. No. 575/78.—In exercise of the powers conferred by section 3 of the Kerala Essential Articles Control (Temporary Powers) Act, 1961 (3 of 1962), the Government of Kerala hereby make the following Order, namely:—

ORDER

(1) This Order may be called the Kerala State Electricity Supply (Kerala State Electricity Board and Licensees Areas) Surcharge Order, 1978.

(2) It shall apply to Extra High Tension and High Tension supplies of Electrical Energy by the Kerala State Electricity Board either directly or through licensees and shall include sales of energy by Kerala State Electricity Board to agencies outside Kerala.

(3) It shall come into force in respect of each consumer including those in the Licensees' areas from the date of taking readings of his meter on or after 1-7-1978.

2. Unless the context otherwise requires, words and expressions used in this Order and defined either in the Indian Electricity Act, 1910 (Central Act 9 of 1910) or in the Electricity (Supply) Act, 1948 (Central Act 54 of 1948) shall have the meanings respectively assigned to them in these Acts.

3. Notwithstanding anything to the contrary contained in any agreement entered into with any consumer or the conditions of service agreed upon by the Kerala State Electricity Board, the Kerala State Electricity Board shall levy a surcharge in accordance with clause 4 on all supplies of electrical energy made by it either directly or through licensees.

4. The surcharge referred to in clause 3 shall be at the rate of 3.33 paise per unit of energy supplied:

> Provided however that in respect of electrical energy supplied to the State of Karnataka the total price chargeable including the surcharge leviable by or under this Order shall not exceed 18 paise per unit.

5. It shall not be lawful for the Kerala State Electricity Board or for the licensees receiving bulk supply from the Kerala State Electricity Board to supply energy for a price which does not include the surcharge leviable by or under this Order.

6. When the supply of energy is made through a licensee the surcharge referred to in clause 3 shall be collected on behalf of the Kerala State Electricity Board by the licensees. If the licensees fail to remit the amount of surcharge due to the Kerala State Electricity Board by the end of the second month following the month in which energy was supplied to the Consumer, the licensee shall pay interest at the rate of one per cent per mensem on the amount due from the due date of remittance.

By order of the Governor,

T. MADHAVA MENON,
Special Secretary (Electricity).

Explanatory Note

(This note is not part of the Notification, but is intended to indicate its general purport).

Government of India have imposed an excise duty of 2 paise per unit of generation of electricity from 1-3-1978. Government have decided to realise the excise duty charged by the Central Government from all E. H. T. and H. T. consumers either directly or through licensees and on sales of energy by Kerala State Electricity Board to agencies outside Kerala by issuing an order under the powers conferred by section 3 of the Kerala Essential Articles Control (Temporary Powers) Act, 1961 (3 of 1962). This notification is intended to achieve the above object.

PRINTED AND PUBLISHED BY THE S.G.P. AT THE GOVERNMENT PRESS, TRIVANDRUM, 1978.

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Vol. XXIII] Trivandrum, Wednesday, 21st June 1978 / 31st Jyaistha 1900 [No. 408

SECRETARIAT OF THE KERALA LEGISLATURE

NOTIFICATION

No. 5069-LA4/78. *Dated, Trivandrum, 21st June 1978.*

The Kerala Apartment Ownership Bill, 1978 together with the Statement of Objects and Reasons, the Financial Memorandum and the Memorandum regarding Delegated Legislation is published, under Rule 69 of the Rules of Procedure and Conduct of Business in the Kerala Legislative Assembly.

DR. R. PRASANNAN,
Secretary,
Legislative Assembly.

PRINTED AND PUBLISHED BY THE S.G.P. AT THE GOVERNMENT PRESS, TRIVANDRUM, 1978.

38/2030/MC.

Fifth Kerala Legislative Assembly
Bill No. 68

THE KERALA APARTMENT OWNERSHIP BILL, 1978

A

BILL

to provide for the ownership of an individual apartment in a building and to make such apartment heritable and transferable property.

Preamble.—WHEREAS it is expedient to provide for the ownership of an individual apartment in a building and to make such apartment heritable and transferable property, and to provide for matters connected with the purposes aforesaid;

BE it enacted in the Twenty-ninth year of the Republic of India as follows:—

1. *Short title, extent and commencement.*—(1) This Act may be called the Kerala Apartment Ownership Act, 1978.

(2) It extends to the whole of the State of Kerala.

(3) It shall come into force on such date as the Government may, by notification in the Gazette, appoint; and different dates may be appointed for different areas in the State.

2. *Application of the Act.*—This Act applies only to property, the sole owner or all of the owners of which submit the same to the provisions of this Act by duly executing and registering a declaration as hereinafter provided:

Provided that, no property shall be submitted to the provisions of this Act, unless it is mainly used, or proposed to be used, for residential purposes.

3. *Definitions.*—In this Act, unless the context otherwise requires,—

(a) "apartment" means a part of the property intended for any type of independent use, including one or more rooms or enclosed spaces located on one or more floors (or part or parts thereof) in a building, intended to be used for residential purposes and with a direct exit to a public street, road or highway or to a common area leading to such street, road or highway.

(b) "apartment owner" means the person or persons owning an apartment and an undivided interest in the common areas and facilities in the percentage specified and established in the declaration;

(c) "apartment number" means the number, letter, or combination thereof designating the apartment in the declaration,

(d) "Association of Apartment Owners" means all of the apartment owners acting as a group in accordance with the bye-laws and the declaration;

(e) "building" means a building containing two or more apartments, and comprising a part of the property;

(f) "bye-laws" means the bye-laws of the Association of Apartment Owners;

(g) "common areas and facilities", unless otherwise provided in the declaration or lawful amendments thereto, means—

(i) the land on which the building is located;

(ii) the foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbies, stairs, stairways, fire-escapes and entrances and exits of the building;

(iii) the basements, cellars, yards, gardens parking areas, and storage spaces;

(iv) the premises for the lodging of person employed for the management of the property;

(v) installations of central services, such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning and incinerating;

(vi) elevators, tanks, pumps, motors, fans, compressors, ducts and in general all apparatus and installations existing for common use;

(vii) such community and commercial facilities as may be provided for in the Declaration; and

(viii) all other parts of the property necessary or convenient to its existence, maintenance and safety, or normally in common use;

(h) "common expenses" means—

(i) all sums lawfully assessed against the apartment owners by the Association of Apartment Owners;

(ii) expenses of administration, maintenance repair or replacement of the common areas and facilities;

(iii) expenses agreed upon as common expenses by the Association of Apartment Owners;

(iv) expenses declared as common expenses by the provisions of this Act, or by the declaration or the bye-laws;

(i) "common profits" means the balance of all income, rents, profits and revenues from the common areas and facilities remaining after the deduction of the common expenses;

(j) "competent authority" means, in relation to buildings constructed or to be constructed by the Kerala State Housing Board, the Housing Commissioner and in any other case, the person authorised by the Government, by notification in the Gazette, to perform the functions of the competent authority for such area as may be specified in the notification;

(k) "declaration" means the instrument by which a property is submitted to the provisions of this Act as hereinafter provided and such declaration as lawfully amended from time to time;

(l) "Deed of Apartment" means a deed of apartment executed by an apartment owner in pursuance of sub-section (2) of section 5;

(m) "Housing Board" means the Kerala State Housing Board constituted under section 4 of the Kerala State Housing Board Act, 1971 (19 of 1971);

(n) "Housing Commissioner" means the Housing Commissioner to the Government;

(o) "Joint family" means an undivided Hindu family and, in the case of other persons, a group or unit, the members of which are by custom joint in possession or residence;

(p) "limited common areas and facilities" means those common areas and facilities designated in the declaration as reserved for use of certain apartment or apartments to the exclusion of the other apartments;

(q) "majority" or "majority of apartment owners" means the apartment owners with fifty-one percent or more of the votes in accordance with the percentages assigned in the declaration to the apartments for voting purposes;

(r) "managing committee" means the Managing Committee of the Association of Apartment Owners;

(s) "person" includes a joint family;

(t) "prescribed" means prescribed by rules made under this Act;

(u) "property" means land, the buildings, improvements and structures thereon, all owned in freehold or held on lease or as occupant under any law for the time being in force and all easement rights and appurtenances belonging thereto, and all articles of personal property intended for use in connection therewith, which have been or are intended to be submitted to the provisions of this Act;

(v) "Secretary" means the Secretary of the Managing Committee;

(w) "State" means the State of Kerala.

4. *Status of apartments.*—Each apartment, together with its undivided interest in the common areas and facilities appurtenant to such apartment, shall, for all purposes, constitute heritable and transferable immovable property within the meaning of any law for the time being in force in the State; and accordingly, an apartment owner may transfer his apartment and the percentage of undivided interest in the common areas and facilities appurtenant to such apartment by way of sale, mortgage, lease, gift, exchange or in any other manner whatsoever in the same manner, to the same extent and subject to the same rights, privileges, obligations, liabilities, investigations, legal proceedings and remedies and to penalty, forfeiture and punishment as any other immovable property, or make a bequest of the same under any law applicable to the transfer and succession of immovable property.

5. *Ownership of apartments.*—(1) Each apartment owner shall be entitled to the exclusive ownership and possession of his apartment.

(2) Each apartment owner shall execute a declaration that he submits his apartment to the provisions of this Act and a Deed of Apartment in relation to his apartment in the manner prescribed for the purpose.

6. *Common areas and facilities.*—(1) Each apartment owner shall be entitled to an undivided interest in the common areas and facilities in the percentage expressed in the declaration.

(2) The percentage referred to in sub-section (1) shall be computed by taking as basis the value of the apartment in relation to the value of the property; and such percentage shall reflect the limited common areas and facilities.

(3) The percentage of the undivided interest of each apartment owner in the common areas and facilities as expressed in the declaration shall have a permanent character, and shall not be altered without the consent of all of the apartment owners expressed in an

amended declaration duly executed and registered as provided in this Act.

(4) The percentage of the undivided interest in the common areas and facilities shall not be separated from the apartment to which it appertains, and shall be deemed to be conveyed or encumbered with the apartment even though such interest is not expressly mentioned in the conveyance or other instrument.

(5) The common areas and facilities shall remain undivided, and no apartment owner or any other person shall bring any action for partition or division of any part thereof, unless the property has been excluded from the provisions of this Act as provided in section 14 or unless the property is subject to an action for partition under section 22 and any covenant to the contrary shall be null and void.

(6) Each apartment owner may use the common areas and facilities in accordance with the purpose for which they are intended without hindering or encroaching upon the lawful rights of the other apartment owners.

(7) The necessary work of maintenance, repair and replacement of the common areas and facilities and the making of any additions or improvements thereto shall be carried out only as provided in this Act and in the bye-laws.

(8) The Association of Apartment Owners shall have the irrecoverable right, to be exercised by the Secretary or Managing Committee to have such access to each apartment from time to time during reasonable hours as may be necessary for the maintenance, repair and replacement of any of the common areas and facilities therein or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the common areas and facilities or to another apartment or apartments.

7. *Compliance with covenants, bye-laws and administrative provisions.*—Each apartment owner shall comply strictly with the bye-laws and with the administrative rules and regulations adopted pursuant thereto, and with the covenants, conditions and restrictions set forth in the declaration or in the deed to his apartment and failure to comply with any of the same shall be a ground for an action to recover sums due, for damages or injunctive relief or both maintainable by the Secretary or Managing Committee on behalf of the Association of Apartment Owners or in a proper case by an aggrieved apartment owner.

8. *Certain works prohibited.*—No apartment owner shall, without the previous unanimous consent of all the other apartment owners—

(a) do any work which would—

(i) jeopardise the soundness or safety of the property; or

(ii) reduce the value of the property; or

(iii) impair any easement or hereditament; or

(b) add any material structure to his apartment or excavate any additional basement or cellar in the property.

9. *Encumbrances against apartments: removal from encumbrance, effect of part payment.*—(1) Subsequent to recording the declaration as provided in this Act and while the property remains subject to this Act no encumbrance of any nature shall arise or be effective against the property and during such period encumbrances may arise or be created only against each apartment and the percentage of undivided interest in the common areas and facilities appurtenant thereto in the same manner and under the same conditions in every respect as encumbrance may arise or be created upon or against any other separate parcel of property subject to individual ownership:

Provided that, if during such period, any encumbrance has arisen or been created against such apartment and the percentage of undivided interest in the common areas and facilities, appurtenant thereto no such apartment and such percentage of undivided interest shall be partitioned or subdivided in interest:

Provided further that, no labour performed or materials furnished with the consent or at the request of an apartment owner or his agent or his contractor or sub-contractor shall be the basis for a charge or any encumbrance under the provisions of the Transfer of Property Act, 1882 (Central Act 4 of 1882) against the apartment or any other property of any other apartment owner not expressly consenting to or requesting for the same, except that such express consent shall be deemed to be given by the owner of any apartment in the case of emergency repairs thereto.

(2) Labour performed and material furnished for the common areas and facilities, if duly authorised by the Association of Apartment Owners, the Secretary of Managing Committee in accordance with this Act, the declaration or the bye-laws, shall be deemed to be performed or furnished with the express consent of each apartment owner and shall be the basis for a charge or encumbrance under the Act aforesaid against each of the apartments and shall be subject to the provisions of sub-section (3) of this section.

(3) In the event of a charge or any encumbrance against two or more apartments becoming effective, the apartment owners of the separate apartments may exclude their apartments and the percentage of undivided interest in the common areas and facilities appurtenant to such apartments from the charge or encumbrance by payment of the fractional or proportional amounts

attributable to each of the apartments affected and thereupon the apartment and the percentage of undivided interest in the common areas and facilities appurtenant thereto shall thereafter be free and clear of the charge or encumbrance.

(4) Payments under sub-section (3) shall be computed by reference to the percentages appearing in the declaration.

(5) The satisfaction or discharge of any charge or encumbrance shall not prevent the person having any other charge or encumbrance from, proceeding to enforce his rights against any apartment and the percentage of undivided interest in the common areas and facilities appurtenant thereto.

10. *Common profits and expenses.*—The common profits of the property shall be distributed among, and the common expenses shall be charged to, the apartment owners according to the percentage of the undivided interest in the common areas and facilities.

11. *Contents of declaration.*—(1) The declaration shall contain the following particulars, namely:—

(a) description of the land on which the building and improvements are or are to be located; and whether the land is freehold or leasehold;

(b) description of the building stating the number of storeys and basements, the number of apartments and the principal materials by which it is or is to be constructed;

(c) the apartment number of each apartment, and a statement of its location, approximate area, number of rooms and immediate common area to which it has access, and any other data necessary for its proper identification;

(d) description of the common areas and facilities;

(e) description of the limited common areas and facilities, if any, stating to which apartments their use is reserved;

(f) value of the property and of each apartment, and the percentage of undivided interest in the common areas and facilities appertaining to each apartment and its owner for all purpose, including voting; and a statement that the apartment and such percentage of undivided interest are not encumbered in any manner whatsoever on the date of the declaration;

(g) statement of the purposes for which the building and each of the apartments are intended and restricted as to use;

(h) the name of a person to receive service of process in the cases hereinafter provided, together with the residence or place of business of such person which shall be within the City, municipality, township or panchayat in which the building is located;

(i) provison as to the percentage of votes by the apartment owners which shall be determinative of whether to rebuild, repair, restore, or sell the property in the event of damage or destruction of all or part of the property;

(j) any other details in connection with the property which the person executing the declaration may deem desirable to set forth consistent with this Act;

(k) the method by which the declaration may be amended, consistent with the provisions of this Act.

(2) A true copy each of the declaration and the bye-laws and all amendments thereto shall be filed in the Office of the competent authority.

12. *Contents of deeds of apartments.*—(1) Deeds of apartments shall include the following particulars, namely:—

(a) description of the land as provided in section 11 or the post office address of the property, including in either case the liber, page and date of executing the declaration, the date and serial number of its registration under the Registration Act, 1908 (Central Act 16 of 1908), and the date and other reference, if any, of its filing with the competent authority;

(b) the apartment number of the apartment in the declaration and any other date necessary for its proper identification;

(c) statement of the use for which the apartment is intended and restrictions on its use, if any;

(d) the percentage of undivided interest appertaining to the apartment in the common areas and facilities;

(e) any further details which the parties to the deed may deem desirable to set forth consistent with the declaration and this Act.

(2) a true copy of every Deed of Apartment shall be filed in the Office of the competent authority.

13. *Declarations, deeds of apartments and copies of floor plans to be registered.*—(1) The declaration and all amendments thereto and the deed of apartment in respect of each apartment and the

floor plans of the buildings referred to in sub-section (2) shall all be registered under the Registration Act, 1908 (Central Act 16 of 1908).

(2) Simultaneously with the registration of the declaration there shall be filed alongwith it a set of the floor plans of the building showing the layout, location, apartment numbers and dimensions of the apartments, stating the name of the building or that it has no name, and bearing the verified statement of an architect certifying that it is an accurate copy of portions of the plans of the building as filed with and approved by the local authority within whose jurisdiction the building is located.

(3) If the plans referred to in sub-section (2) do not include a verified statement by the architect that such plans fully and accurately depict the layout, location, apartment numbers and dimensions of the apartments as built, there shall be recorded prior, to the first conveyance of any apartment, an amendment to the declaration to which shall be attached a verified statement of an architect certifying that the plans thereto are filed, or being filed simultaneously with such amendment, fully and accurately depict the layout, location, apartment number and dimensions of the apartment as built.

(4) In all registration offices a book called "Register of Declarations and Deeds of Apartments under the Kerala Apartment Ownership Act, 1978" and Index relating thereto shall be kept.

(5) The book and the Index referred to in sub-section (4) shall be kept in such form and shall contain such particulars as may be prescribed.

(6) It shall be the duty of every Secretary or Managing Committee to send to the Sub-Registrar of the area in which the property containing the apartment is situate; or if there is no Sub-Registrar for the area to the Registrar of the District in which such property is situate, a certified copy of the Declaration and Deed of Apartment made in respect of every apartment contained in the building forming part of the property together with a memorandum containing such particulars as may be prescribed.

(7) The Sub-Registrar or, as the case may be, the Registrar shall register the declaration along with floor plans of the building and the Deed of Apartment in the Register of Declarations and Deeds of Apartments under this Act and shall also enter particulars in the Index kept under sub-section (5).

(8) Any person acquiring any apartment of any apartment owner shall be deemed to have notice of the declaration and of the Deed of Apartment as from the date of its registration under sub-section (7).

(9) Except as provided in this section, the provisions of the Registration Act, 1908 (Central Act 16 of 1908), shall *mutatis mutandis* apply to the registration of the declarations and Deeds of Apartments and the words and expressions used in this section but not defined in this Act shall have the meanings assigned to them in the Registration Act, 1908 (Central Act 16 of 1908).

14. *Exclusion from provisions of Act.*—(1) All the apartment owners may exclude a property from the provisions of this Act by an instrument to that effect duly executed:

Provided that the holders of all charges and other encumbrances affecting any of the apartments consent thereto or agree, in either case by instruments duly executed, that their charges or encumbrances be transferred to the percentage of the undivided interest of the apartment owner in the property as hereinafter provided.

(2) Upon the exclusion of the property from the provisions of this Act, the property shall be deemed to be owned in common by the apartment owners and the undivided interest in the property owned in common which shall appertain to each apartment owner shall be the percentage of undivided interest previously owned by such owner in the common areas and facilities.

15. *Exclusion no bar to subsequent resubmission of property to the Act.*—The exclusion provided for in section 14 shall in no way bar the subsequent resubmission of the property to the provisions of this Act.

16. *Bye-laws.*—(1) The administration of every property shall be governed by bye-laws a true copy of which shall be annexed to the declaration.

(2) No modification of or amendment to the bye-laws shall be valid, unless set forth in an amendment to the declaration, and such amendment is duly recorded, and a copy thereof is duly filed with the competent authority.

(3) The bye-laws shall provide for the following matters, namely:—

(a) the election from among the apartment owners of a Managing Committee and the number of person constituting the same;

(b) the term of office of the members of the Managing Committee;

(c) the powers and duties and the allowances to be paid to the members of the Managing Committee;

(d) the method of removal from office of members of the Managing Committee;

(e) the election of a Secretary to the Managing Committee and his powers and duties;

(f) the powers and duties of the Managing Committee which may be delegated to the Secretary by the Committee;

(g) Procedure for convening and conducting meetings of the apartment owners;

(h) election of a President from among the members of the Managing Committee who shall preside over the meetings of such Committee of the Association of Apartment owners;

(i) election of a Treasurer and his powers and duties;

(j) maintenance, repair and replacement of the common areas and facilities and payments therefor;

(k) manner of collecting from the apartment owners their share of the common expenses;

(l) designation and conditions of service of persons employed for the maintenance, repair and replacement of the common areas and facilities;

(m) the method of adopting and of amending administrative rules and regulations governing the details of the operation and use of the common areas and facilities;

(n) such restrictions on the requirements respecting the use and maintenance of the apartments and the use of the common areas and facilities not set forth in the declaration, as are designed to prevent unreasonable interference with the use of their respective apartments and of the common areas and facilities by the several apartment owners;

(o) the percentage of the votes required to amend the bye-laws.

(4) The bye-laws may also provide for the following matters, namely:—

(a) subject to the provisions of this Act, provision for regulating transfer or partition of any apartment and percentage of undivided interest in the common areas and facilities appurtenant to such apartment, subject to such terms and conditions as may be specified in the bye-laws;

(b) provisions enabling the Managing Committee to retain certain areas of the building and lease to non-residents for commercial purposes and for distribution of resulting proceeds to the apartment owners as income or application

thereof in reduction of their common charges for maintaining the building;

(c) any other provisions, not inconsistent with the provisions of this Act, relating to the audit and accounts and administration of the property and annual and special general meetings, annual report and the like.

17. *Waiver of use of common areas and facilities.*—No apartment owner shall be entitled to exempt himself from liability for his contribution towards the common expenses by waiver of the use or enjoyment of any of the common areas and facilities or by abandonment of his apartment.

18. *Separate assessment.*—Notwithstanding anything to the contrary contained in any law relating to local authorities, each apartment and its percentage of undivided interest in the common areas and facilities appurtenant to such apartment (being an apartment submitted to the provisions of this Act) shall be deemed to be separate property for the purpose of assessment to tax on lands and buildings leviable under such law and shall be assessed and taxed accordingly; and for this purpose, a local authority shall make all suitable rules to carryout the provisions of this section.

19. *Charge on property for common expenses.*—All sums assessed by the Association of Apartment Owners but unpaid for the share of the common expenses chargeable to any apartment shall constitute a charge on such apartment and shall have priority over all other charges, except only (i) charge, if any, on the apartment for payment of taxes due to the Government or a local authority, and (ii) all sums unpaid on a first mortgage of the apartment.

20. *Joint and several liability of vendor, for unpaid common expenses.*—(1) On the sale of an apartment, the purchaser of the apartment shall be jointly and severally liable with the vendor for all unpaid assessments against the vendor for his share of the common expenses upto the time of the sale without prejudice to the purchaser's right to recover from the vendor the amount paid by the purchaser therefor.

(2) Any such purchaser shall be entitled to a statement from the Secretary or Managing Committee setting forth the amount of the unpaid assessment against the vendor, and such purchaser shall not be liable for, nor shall the apartment sold, be subject to a charge for any unpaid share of the common expenses against such apartment accrued prior to such sale in excess of the amount therein set forth.

21. *Insurance.*—(1) The Secretary or Managing Committee if required by the Declaration or the bye-laws or by a majority of

the apartment owners, or at the request of a mortgagee having a first mortgage covering an apartment, shall have the authority to, and shall obtain insurance for the property against loss or damage by fire, and such other hazards under such terms and for such amounts as shall be required, or requested.

(2) Such insurance coverage shall be written on the property in the name of such Secretary or of the Managing Committee as trustee for each of the apartment owners in the percentages established in the Declaration.

(3) Premiums shall be common expenses and provisions for such insurance shall be without prejudice to the right of each apartment owner to insure his own apartment for his benefit.

22. *Disposition of property, destruction or damage.*—If within sixty days of the date of damage to or destruction of all or any part of the property, it is not decided by the Association of Apartment Owners to repair, reconstruct or rebuild, the property or part, as the case may be, then and in that event,—

(a) the property shall be deemed to be owned in common by the apartment owners;

(b) the undivided interest in the property owned in common which shall appertain to each apartment owner shall be the percentage of the undivided interest previously owned by such owner in the common areas and facilities;

(c) any encumbrances affecting any of the apartments shall be deemed to be transferred in accordance with the existing priority to the percentage of the undivided interest of the apartment owners in the property as provided herein;

(d) the property shall be subject to an action for partition at the suit of any apartment owner, in which event the net proceeds of sale together with the net proceeds of the insurance on the property, if any, shall be considered as one fund and shall be divided among all the apartment owners in percentage equal to the percentage of undivided interest owned by each owner in the property after first paying out all the respective shares of the apartment owners to the extent sufficient for the purpose and all charges on the undivided interest in the property owned by each apartment owner.

23. *Action.*—(1) Without limiting the rights of any apartment owner, action may be brought by the Secretary or Managing Committee in either case in the discretion of the Managing Committee on behalf of two or more of the apartment owners as their respective interest may appear, with respect to any cause of action,

relating to the common areas and facilities or more than one apartment.

(2) Service of process on two or more apartment owners in any action relating to the common areas and facilities or more than one apartment may be made on the person designated in the Declaration to receive service of process.

24. *Act to be binding on apartment owners, tenants, etc.*—(1) All apartment owners, tenants of such owners, employees of such owners or tenants, or any other person who may in any manner use any property or any part thereof submitted to the provisions of this Act shall be subject to this Act and to the Declaration and the bye-laws of the Association of Apartment Owners adopted pursuant to the provisions of this Act.

(2) All agreements, decisions and determinations lawfully made by the Association of Apartment Owners in accordance with the voting percentages established under this Act the Declaration or the bye-laws, shall be deemed to be binding on all apartment owners.

25. *Power to make rules.*—(1) The Government may, subject to the condition of previous publication, by notification in the Gazette, make rules for carrying into effect the provisions of this Act.

(2) Every rule made under this section shall be laid as soon as may be after it is made, before the Legislative Assembly while it is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, the Legislative Assembly makes any modification in the rule or decided that the rule should not be issued, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done or omitted to be done under that rule.

26. *Application of Transfer of Property Act.*—For the removal of doubts, it is hereby declared that the provisions of the Transfer of Property Act, 1882 (Central Act 4 of 1882), shall, in so far as they are not inconsistent with the provisions of this Act, apply to every apartment together with its undivided interest in the common areas and facilities appurtenant to such apartment as those provisions apply in relation to any immovable property, and the provisions of this Act shall take effect, notwithstanding anything to the contrary contained in any contract.

27. *Power to remove difficulties.*—(1) If any difficulty arises in giving effect to the provisions of this Act, the Government may, as

occasion may require, by order, do anything not inconsistent with the provisions of this Act which appear to them necessary or proper for the purpose of removing the difficulty.

(2) Every order issued under sub-section (1) shall be laid as soon as may be after it is issued before the Legislative Assembly while it is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions and if before the expiry of the session in which it is so laid or the session immediately following, the Legislative Assembly makes any modifications in the order or decides that the order should not be issued, the order shall thereafter have effect only on such modified form or be of no effect, as the case may be; so however that any such modification or amendment shall be without prejudice to the validity of anything done or omitted to be done under that order.

STATEMENT OF OBJECTS AND REASONS

Lands have become dear in the principal towns and cities in the State and consequently independent house-sites in such areas are beyond the means of even people having moderate income. Provision of house-sites for construction of independent houses also results in un-economic urban land utilisation. Further, there is scarcity of lands in the cities for house construction purposes. Therefore, it has become necessary to construct apartments (flats) in a single building. To promote the construction of such buildings it is necessary to provide for the ownership of such individual apartments and to make such apartments heritable and transferable property, so that the residents of such buildings can secure loans from institutions like the Life Insurance Corporation of India. But, there is no law in the State which enables the occupants of apartments to acquire ownership and marketable title to their apartments. The Bill seeks to enact a law for the purpose.

FINANCIAL MEMORANDUM

The Bill, if enacted and brought into operation, would not involve any expenditure from the Consolidated Fund of the State.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (3) of clause 1 of the Bill empowers the Government to bring the Act into force in the whole of the State or in different areas of the State on a date or dates notified in the Gazette.

Sub-clause (2) of clause 5 empowers the Government to prescribe the manner in which an apartment owner shall execute a declaration and a deed of apartment.

Sub-clause (5) of clause 13 authorises the Government to prescribe the form of the register of declarations and deeds of apartments and the index relating thereto and the particulars which such book and index shall contain.

Sub-clause (6) of clause 13 empowers the Government to prescribe the particulars to be contained in the memorandum to be sent to the Sub-Registrar or District Registrar by the Secretary or Managing Committee along with a certified copy of the declaration and deed of apartment.

Clause 16 of the Bill provides for the making of bye-laws by the Association of Apartment Owners for the administration of every property to which the legislation applies. The matters in respect of which bye-laws shall be made are *inter alia* the election of the Managing Committee, the term of office of the members of the managing committee, the powers and duties of the committee, maintenance, repair and replacement of the common areas and facilities and payments therefor and designations and conditions of service of persons employed for the maintenance, repair and replacement of the common areas and facilities.

Clause 25 empowers the Government to make rules to carry into effect the provisions of the Bill when enacted.

Clause 27 empowers the Government to make orders that may be necessary or proper for the purpose of removing any difficulty, that may arise in giving effect to the provisions of the Act.

The above provisions relate to matters of procedure and detail. Moreover, the rules to be made under clause 25 and the orders to be issued under clause 27 shall be subject to the scrutiny of the Legislative Assembly. The delegation of legislative power is thus of a normal character.

OOMMEN CHANDY.

Reg. No. KL/TV/12

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GOVERNMENT OF KERALA

Health (G) Department

NOTIFICATIONS

I

No. 23145/G3/78/HD-I. *Dated, Trivandrum 17th June, 1978.*

(i)

S.R.O. No. 576/78.—In exercise of the powers conferred by sub-section (1) of section 9 of the Prevention of Food Adulteration Act, 1954 (Central Act 37 of 1954) and in supersession of notification No. 31396/G3/75/HD-21(i) dated the 14th July, 1975 published in Part I of the Kerala Gazette No. 31 dated the 5th August, 1975, the Government of Kerala hereby appoint Shri K. P. Narayanan Nair, Food Inspector, Devikulam Circle in the Department of Health Services to be Food Inspector for the purposes of the said Act and assign to him the areas within the Devikulam Circle comprising the under-mentioned Panchayats as the local areas within which he shall exercise his jurisdiction.

Name of Panchayats:—Pampadumpara, Kanthalloor, Mannamkandam, Marayoor, Munnar, Pallivasal, Vattavada, Vellathuval, Konnathady, Rajakad, Santhampara, Udumbanchola, Nedumkandom, Chinnakanal, Rajakumari, Bisonvalley, Kuttampuzha, Vathukudy and Senapathy Panchayat areas.

83/2032/MC

S. R. O. No. 577/78.—In exercise of the powers conferred by sub-section (1) of section 20 of the Prevention of Food Adulteration Act, 1954 (Central Act 37 of 1954) and in supersession of notification No. 31396/G3/75/HD-21 (ii) dated the 14th July, 1975 published in Part I of the Kerala Gazette No. 31 dated the 5th August, 1975, the Government of Kerala hereby authorise Shri K. P. Narayanan Nair, Food Inspector appointed under sub-section (1) of section 9 of the said Act to institute prosecution for offences under the said Act within the local areas in his jurisdiction.

Explanatory Note

(This does not form part of the notification but is intended to indicate its general purport).

Shri K. P. Narayanan Nair has been transferred and posted as Food Inspector of Devikulam Circle. It is therefore necessary to appoint him as Food Inspector under the Prevention of Food Adulteration Act and to authorise him to institute prosecutions under the said Act. The notifications are for the above purpose.

II

No. 23143/G3/78/HD-II. *Dated, Trivandrum, 17th June, 1978.*

(i)

S.R.O. No. 578/78.—In exercise of the powers conferred by sub-section (1) of section 9 of the Prevention of Food Adulteration Act, 1954 (Central Act 37 of 1954) and in supersession of notification No. 31396/G3/HD-23(i) dated the 14th July, 1975 published in Part I of the Kerala Gazette No. 31 dated the 5th August, 1975, the Government of Kerala hereby appoint Shri P. C. Koshy, Food Inspector, Muvattupuzha Circle in the Department of Health Services to be a Food Inspector for the purposes of the said Act and assign to him the areas within the Muvattupuzha Circle comprising the undermentioned Panchayats as the local areas within which he shall exercise his jurisdiction.

Name of Panchayats:—Kavalangad, Keerampara, Kottapadi, Nellikuzhi, Pindimana, Varapetti, Kuthattukulam, Palkuzha, Thirumarady, Piravom, Maneed, Ramamangalam, Pampakuda, Elanji, Paipra, Pothanicad, Paingattur, Ayavana, Avoli, Valakom, Marady and Arakuzha Panchayat areas.

(ii)

S.R.O. No. 579/78.—In exercise of the powers conferred by sub-section (1) of section 20 of the Prevention of Food Adulteratio n Act, 1954 (Central Act 37 of 1954) and in supersession of notification No. 31396/G3/75/HD-23 (ii) dated the 14th July, 1975 published in Part I of the Kerala Gazette No. 31 dated the 5th August, 1975, the Government of Kerala hereby authorise Shri P. C. Koshy, Food Inspector appointed under sub-section (1) of section 9 of the said Act to institute prosecutions for offences under the said Act within the local areas in his jurisdiction.

Explanatory Note

(This does not form a part of the notification but is intended to indicate its general purport).

Shri P. C. Koshy has been posted as Food Inspector in the Moovattupuzha Circle. It is necessary to appoint him as Food Inspector under the Prevention of Food Adulteration Act and to authorise him to institute prosecutions for offences under the said Act. The notifications are for the above purpose.

III

No. 23145/G3/78/HD-III *Dated, Trivandrum, 17th June 1978.*

(i)

S.R.O. No. 580/78.—In exercise of the powers conferred by sub-section (1) of section 9 of the Prevention of Food Adulteration Act, 1954 (Central Act 37 of 1954) and in supersession of Notification No. 55341/G3/76-4/HD (i) dated the 28th September, 1976 published as S.R.O. No. 1006/76 in Kerala Gazette Extraordinary No. 547 dated the 4th October, 1976 the Government of Kerala hereby appoint Shri. P. T. Jacob, Food Inspector, Changanacherry Circle in the Department of Health Services to be a Food Inspector for the purposes of the said Act and assign to him the areas within the Changanacherry Circle comprising the undermentioned Panchayats as the local areas within which he shall exercise his jurisdiction.

Name of Panchayat:—Aymanam, Ayarkunnam, Kumarakam, Akalakunnam, Kooroppada, Karukachal, Kurichy, Kangazha, Madappally, Nattakam, Nedumkunnam, Panachikkad, Puthupally, Pampady, Pallikkathode, Paipad, Thiruvarpu, Trikkodithanam, Vazhappally, Vakathanam and Vijayapuram Panchayat areas.

(ii)

S.R.O. No. 581/78.—In exercise of the powers conferred by sub-section (1) of section 20 of the Prevention of Food Adulteration Act, 1954 (Central Act 37 of 1954) and in supersession of notification No. 55341/C3/76-4/HD(ii) dated the 28th September, 1976 published as SRO No.1006/76 in the Kerala Gazette Extraordinary No. 547 dated the 4th October, 1976, the Government of Kerala hereby authorise Shri P. T. Jacob, Food Inspector appointed under sub-section (1) of section 9 of the said Act to institute prosecution for offences under the said Act within the local areas in his jurisdiction.

Explanatory Note

(This does not form part of the notification but is intended to indicate its general purport).

Shri P. T. Jacob, has been posted as Food Inspector of Changanacherry Circle. It is necessary to appoint him as Food Inspector under the Prevention of Food Adulteration Act and to authorise him to institute prosecutions for offences under the said Act. The notifications are for the above purpose.

IV

No. 23145/C3/78/HD-IV. *Dated, Trivandrum, 17th June 1978*

(i)

S.R.O. No. 582/78.—In exercise of the powers conferred by sub-section (1) of section 9 of the Prevention of Food Adulteration Act, 1954 (Central Act 37 of 1954) and in supersession of Notification No. 31396/C3/75/HD-8(i) dated the 14th July 1975 published in Part I of the Kerala Gazette No. 31 dated the 5th August, 1975 the Government of Kerala hereby appoint Shri C. Janardhanan Nair, Food Inspector, Karunagappally Circle in the Department of Health Services to be a Food Inspector for the purposes of the said Act and assign to him areas within the Karunagappally Circle comprising the undermentioned Panchayats as the local areas within which he shall exercise his jurisdiction.

Name of Panchayat:—Sasthamcotta, West Kallada, Chavara, Panmana, Thekkumbhagom, Thevalakara, Karunagappally, Alappad, Mynagappally, Thazhava, Thodiyoor, Clapana, Kulasekharapuram, and Oachira Panchayat areas.

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1978

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GOVERNMENT OF KERALA

Labour and Housing (J) Department

NOTIFICATIONS

I

G. O. MS. No. 70/78/L&HD. *Dated, Trivandrum, 21st June, 1978.*

S. R. O. No. 584/78.—WHEREAS the term of nomination of some non-official members of the Kerala State Housing Board made in Notification No. G. O. MS. 6/75/LA&SWD dated the 8th January, 1975 and published as S. R. O. No. 26/75 in the Kerala Gazette Extraordinary No. 21 dated the 8th January, 1975, has expired on 7th January, 1978;

AND WHEREAS the term of nomination of the non-official member, Smt. V. Lathangi made in Notification No. G. O. MS. 74/75/LA & SWD dated the 31st March, 1975 and published as S. R. O. No. 318/75 in Part I of the Kerala Gazette No. 14 dated the 8th April, 1975 has expired on the 30th March, 1978;

NOW, THEREFORE, in exercise of the powers conferred by section 4 read with Section 5 of the Kerala State Housing Board Act, 1971 (19 of 1971) the Government of Kerala hereby appoint the following persons to be non-official members of the Kerala State Housing Board, namely:—

1. Shri K. P. Madhavan, Kunnil House, Kilimannoor, (Harijan member),

2. Shri T. K. Ramakrishnan, M. L. A. (Trippunithura), Manavelikkakathu, Eroor P. O., Thrippunithura.
3. Shri V. V. Raghavan, Chelat Lane, Trichur-4.
4. Shri Pattoli Unnikrishnan, Pattoli Market P. O., via. Kayamkulam.
5. Shri V. K. Kuttan, Joint Secretary to Government (Retd.), T. C. No. 14/1238, Girija Bhavan, Near Water Works, Palayam Ward, Trivandrum (Harijan Member).
6. Shri L. W. Baker, The Hamlet, Nalanchira, Trivandrum-15 Technical Member.

The other three non-officials, namely, Shri P. P. Ahammed Haji, Shri A. C. Mathukutty and Shri Prakulam Bhasi will continue till they complete the period of three years.

Explanatory Note

(This note is not part of the notification, but is intended to indicate its general purport).

The term of nomination of five non-official members of the Kerala State Housing Board who were appointed by notification No. G. O. (MS) 6/75/LA&SWD dated 8-1-1975 and published as S. R. O. No. 26/75 in Kerala Gazette Extraordinary No. 21 dated 8-1-1975 has expired on 7-1-1978 and the term of nomination of one non-official member appointed as per notification No. G. O. (MS.) 74/75/LA&SWD dated 31-3-1975 published as S. R. O. No. 318/75 in Kerala Gazette No. 4 dated 8-4-1975 has expired on 30-3-1978. This notification is intended to fill up the six vacancies of non-official members in the Kerala State Housing Board which have thus arisen.

II

G. O. MS. 71/78/L & H. D. *Dated, Trivandrum, 21st June, 1978.*

S. R. O. No. 585/78.—In exercise of the powers conferred by Section 4 read with Section 5 of the Kerala State Housing Board Act, 1971 (19 of 1971), the Government of Kerala hereby make the following further amendment to the notification No. G. O. MS. 158/71/LAD dated the 13th October, 1971 published as S. R. O. No. 378/71 in the Kerala Gazette Extraordinary No. 462 dated the 13th October, 1971, namely:—

AMENDMENT

In the Schedule to the said notification, in Part I, under the heading 'Official Members' for item 3, the following shall be substituted, namely:—

"3. Deputy Secretary to Government in charge of Housing.

Explanatory Note

(This note is not part of the notification, but is intended to indicate its general purport).

In the notification No. G. O. MS. 158/71/LAD dated 13-10-1971 published as S. R. O. No. 378/71 in the Kerala Gazette Extraordinary No. 462 dated 13-10-1971, the Secretary to Government in charge of Housing was included as an official member of the Kerala State Housing Board. In notification No. G. O. MS. 101/74/LA & SWD dated 2-5-1975 published as S. R. O. No. 315/74 in Kerala Gazette No. 19 (Part I) dated 7-5-1974, the Joint Secretary to Government in charge of Housing was included as the official member of the Board in the place of Secretary to Government. It is now considered necessary to include the Deputy Secretary to Government in charge of Housing as a member of the Board in the place of the Joint Secretary. This notification is intended for the above purpose.

By order of the Governor,

J. S. BADHAN,

Secretary (Labour & Housing).

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